

BILL ANALYSIS

H.B. 1517
By: Wentworth
Senate Sponsor: Krier

Senate Jurisprudence Committee
8-30-89
Enrolled

BACKGROUND

In 1971 the Probate Code was amended to add Section 36A to provide for durable powers of attorney. Since that time, however, some banks, title companies, transfer agents and others have established their own arbitrary criteria as to whether they will accept a durable power of attorney, and act upon it when requested to do so by the attorney in fact. This appears to be directly contrary to the intent of the 1971 amendment.

PURPOSE

As proposed, H.B. 1517 amends Section 36A of the Probate Code to provide further guidelines for a durable power of attorney.

EFFECT ON CURRENT LAW

Amends the Probate Code, <36A.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not grant any additional rulemaking authority to a state officer, institution or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 36A, Probate Code, as follows:

(b) Provides that a durable power of attorney does not lapse because of the passage of time unless a time limitation is specifically stated in the instrument granting the power.

(c) Provides that a durable power of attorney must be in writing, signed by the principal, signed by two witnesses who are at least 18 years old, and filed for record in the county in which the principal resides, except for a power of attorney executed for medical care.

(d) Provides that a third party must recognize the attorney in fact or agent if the durable power of attorney contains language authorizing the attorney in fact or agent to hold a third party harmless who accepts and acts under the power.

(f) Provides that a durable power of attorney may be revoked by the principal signing an instrument and filing it for record in the county where the power of attorney is recorded.

SECTION 2. The provisions of this act apply only to durable powers of attorney that are executed on or after the effective date.

SECTION 3. Emergency clause.
Effective date: upon passage.